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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,518	12/28/2001	Robert B. Hope	ULB-003CV	8646
7590	03/09/2005		EXAMINER	
Kenneth J. LuKacher, Esq. South Winton Court Suite 204 3136 Winton Road Rochester, NY 14623			REDMAN, JERRY E	
			ART UNIT	PAPER NUMBER
			3634	
			DATE MAILED: 03/09/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

ISY

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Office Action Summary

	Application No.	Applicant(s)	
	10/033,518	HOPE, ROBERT B.	
Examiner	Art Unit		
Jerry Redman	3634		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Claims 5-7, and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, it is not readily apparent to the Examiner if the applicant is claiming a weather seal or a method of forming a weather seal.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keys ('564) in view of Japanese patent No. 08012815A to Iwasa et al. Keys ('564) discloses a weather seal and process of forming the weather seal comprising a wire core on a spool, a first layer of material (EPDM)(17) encapsulating the wire core (16), chemical bonding adhesive, a second layer of material (21) encapsulating the first layer (17) and the wire core (16) wherein the first and second layers are extruded to form a weather seal. Keys ('564) fails to provide the first layer to be of recycled material. Japanese patent No. 08012815A to Iwasa et al. disclose a weather seal having two layers (11 and 13) with the inner layer (13) formed of recycled material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the first layer of Keys to be formed of recycled material as taught by Japanese patent No.

08012815A to Iwasa et al. since it's well known that recycled material is cheaper to manufacture without sacrificing quality of the material.

Claims 2, 6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keys ('564) and Japanese patent No. 08012815A to Iwasa et al. as applied to claim 1 above, and further in view of Vinay. All of the elements of the instant invention are discussed in detail above except providing the wire core to be looped. Vinay discloses a weather seal having a core formed of wire looped. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the core of the weather seal of Keys ('564) with loops as taught by Vinay since loops allows the core to be better reinforced by providing more surface area within the weather seal.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All documents have been marked along the left side to highlight the more important information within each document. Recycling tires (2001) discloses the use of recycled rubber over virgin rubber. Plastics Consultancy (2/1994) the phraseology "virgin"/"virgin material" as used in the art. Rubber Grades (date unknown) discloses different definitions for rubber blends and composites. ATSM International (12/2003) discloses standard classification system for rubber products. The IRRDB.NET (date unknown) discloses the history of natural rubber. Britannica Student Encyclopedia the use of the phraseology "virgin" rubber. Classification of Exports (U.S. Census Bureau, updated yearly), chapter 40, discloses in detail the phraseology of "rubber".

The applicant's arguments have been considered but are not deemed persuasive. It appears that the applicant's arguments are more limiting than the claims. The applicant argues that "coating" is different than "encapsulating". Webster's Ninth New Collegiate Dictionary defines "encapsulating" as: to enclose in, and "coating" is defined as: something that is placed over or about another thing. Based on these definitions and the broadest possible interpretation, it appears that the second layer (21) of Keys ('654) covers/encapsulates the first layer (17).

With respect to the applicant's arguments of the specific phraseology of "virgin elastomeric material", several citations that are herein attached discloses the broadest interpretation which is well known to one of ordinary skill in the art.

With respect to the applicant's arguments that claims 5-7, 9, and 10 are proper "product by process" claims is not readily understood by the Examiner. Is the applicant claiming a weather seal or a method of forming a weather seal? If the applicant's position is that they are product by process claims then little or no patentable weight is given to the process limitations per se (See MPEP section 2113).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 703-308-2120.



Jerry Redman
Primary Examiner